

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
VIKING DEVELOPMENT COMPANY, )  
Appellant, )  
vs. )  
SPOKANE COUNTY AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

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PCHB No. 128

ORDER ON MOTION,  
FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This is the appeal of a \$25.00 civil penalty for an alleged open burning violation of respondent's Regulation I, Section 6.01. It came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) in respondent's conference room in Spokane at 4:00 p.m., September 21, 1972.

Appellant appeared through its attorney, Paul R. Derr. Respondent was represented by its Director, Fred A. Shiosaki. David Storey, court reporter, recorded the proceeding.

Mr. Derr moved for dismissal on the grounds that the inspector who

1 issued respondent's original Field Notice of Violation to appellant was  
2 not present to testify. The hearing officer, noting that respondent was  
3 not represented by counsel, instructed respondent to obtain the  
4 witness' testimony by deposition and forward it to the Board's office  
5 in Olympia. A ruling was deferred on the motion until respondent had  
6 had a reasonable time to furnish the deposition. The hearing officer,  
7 noting that a hearing officer is in Spokane on an infrequent basis as  
8 a service to local appellants, ordered the formal hearing to continue  
9 for the taking of testimony of those witnesses present.

10 Witnesses were sworn and testified. An exhibit was offered and  
11 admitted.

12 Subsequently on November 6, 1972, in the offices of the Spokane  
13 County Air Pollution Control Authority, in Spokane, the deposition of  
14 Daniel Shuee, inspector for respondent, was taken in the presence of  
15 Mr. Derr and Mr. Shiosaki. The deposition was included by the Board  
16 in its file on this matter.

17 On the basis of testimony heard, exhibits examined and the deposition  
18 of Daniel Shuee, the Pollution Control Hearings Board prepared an Order  
19 on Motion, Proposed Findings of Fact, Conclusions and Order which were  
20 submitted to the appellant and respondent on November 13, 1972. No  
21 objections or exceptions to the Order on Motion, Proposed Findings of  
22 Fact, Conclusions and Order having been received, the Pollution Control  
23 Hearings Board makes and enters the following:

24 FINDINGS OF FACT

25 I.

26 On April 27, 1972, at the site of a recently built residence at

27 ORDER ON MOTION, FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 Liberty Lake, Spokane County, appellant burned a pile of scrap lumber  
2 about seven feet in diameter. An inspector of respondent, noting smoke  
3 from this fire, requested appellant to extinguish the fire, which was  
4 done, and issued appellant a Field Notice of Violation of respondent's  
5 Regulation I. Subsequently, a formal Notice of Violation, invoking a  
6 \$25.00 civil penalty, was sent to appellant by registered mail.

7 II.

8 April 27, 1972 was within a period of permissive outdoor household  
9 vegetation burning authorized by respondent.

10 III.

11 The outdoor burning of dimensional lumber and other construction  
2 waste, even during a period of permissive outdoor household vegetation  
13 burning, is prohibited by Section 6.01 of respondent's Regulation I.

14 From these Findings of Fact the Pollution Control Hearings  
15 Board comes to these

16 CONCLUSIONS

17 I.

18 Appellant was in violation of Section 6.01 of respondent's  
19 Regulation I on April 27, 1972 at Liberty Lake, Spokane County.

20 II.

21 The \$25.00 civil penalty invoked in this matter, being one tenth  
22 of the allowable maximum penalty, is reasonable.

23 III.

24 The testimony of the inspector who issued the Field Notice of  
25 Violation having been furnished by deposition, the Motion to Dismiss  
26 is denied.

IV.

1  
2 However, appellant has been put to unnecessary expense in  
3 participating in the inspector's deposition.

4 Therefore, the Pollution Control Hearings Board makes this

5 ORDER

6 The appeal is denied, but the civil penalty of \$25.00 is suspended  
7 pending no further violation of respondent's Regulation I by appellant.

8 DONE at Olympia, Washington this 27th day of December, 1972

9 POLLUTION CONTROL HEARINGS BOARD

10 Walt Woodward  
11 WALT WOODWARD, Chairman

12 James T. Sheehy  
13 JAMES T. SHEEHY, Member

14 Matthew W. Hill  
15 MATTHEW W. HILL, Member

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